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8  
9 IN THE UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,  
12  
13 Plaintiff,  
14 v.  
15 PEDRO DURAN,  
16 Defendant.

CASE NO. 1:20-CR-00096-NONE-SKO

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
FINDINGS AND ORDER

DATE: November 18, 2020  
TIME: 1:00 p.m.  
COURT: Hon. Sheila K. Oberto

17 This case was previously set for a status conference on November 16, 2020. The date was  
18 moved to November 18, 2020 by order of this Court. This Court has issued a series of General Orders to  
19 address public health concerns related to COVID-19 and to suspend jury trials in the Eastern District of  
20 California. By stipulation, the parties now move to continue the status conference to March 3, 2021, and  
21 to exclude time between November 16, 2020 and March 3, 2021.

22 Although the General Orders address the district-wide health concern, the Supreme Court has  
23 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive  
24 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.  
25 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no  
26 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
27 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
28 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally

1 or in writing”).

2 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
3 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice  
4 continuances are excludable only if “the judge granted such continuance on the basis of his findings that  
5 the ends of justice served by taking such action outweigh the best interest of the public and the  
6 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless  
7 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the  
8 ends of justice served by the granting of such continuance outweigh the best interests of the public and  
9 the defendant in a speedy trial.” *Id.*

10 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
11 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
12 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
13 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
14 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
15 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*  
16 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the  
17 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a  
18 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

19 In light of the societal context created by the foregoing, this Court should consider the following  
20 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
21 justice exception, § 3161(h)(7) (Local Code T4).<sup>1</sup> If continued, this Court should designate a new date  
22 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any  
23 pretrial continuance must be “specifically limited in time”).

## 24 STIPULATION

25 Plaintiff United States of America, by and through its counsel of record, and defendant, by and  
26 through defendant’s counsel of record, hereby stipulate as follows:

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27 <sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make  
28 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
Cal. March 18, 2020).

1           1.       By previous order, this matter was set for status on November 16, 2020. It was then  
2 continued to November 18, 2020 by order of the Court.

3           2.       By this stipulation, defendant now moves to continue the status conference until March 3,  
4 2021, and to exclude time between November 16, 2020, and March 3, 2021, under Local Code T4.

5           3.       The parties agree and stipulate, and request that the Court find the following:

6               a)       The government has represented that discovery associated with this case includes  
7 investigative reports, numerous photographs and videos, hundreds of hours of recorded  
8 telephone conversations pursuant to wiretap order, cellular phone extractions, and large amounts  
9 of cellular telephone precise location data. This discovery has been either produced directly to  
10 counsel and/or made available for inspection and copying. Additionally, the government  
11 anticipates providing additional discovery in the coming months.

12               b)       Counsel for defendant desires additional time consult with their clients, conduct  
13 further investigation, review the voluminous discovery, prepare for a possible trial, and to  
14 continue to explore a potential resolution of the case.

15               c)       Counsel for defendant believes that failure to grant the above-requested  
16 continuance would deny him/her the reasonable time necessary for effective preparation, taking  
17 into account the exercise of due diligence.

18               d)       The government does not object to the continuance.

19               e)       Based on the above-stated findings, the ends of justice served by continuing the  
20 case as requested outweigh the interest of the public and the defendant in a trial within the  
21 original date prescribed by the Speedy Trial Act.

22               f)       For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
23 et seq., within which trial must commence, the time period of November 16, 2020 to March 3,  
24 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(ii), (iv) [Local  
25 Code T4] because it results from a continuance granted by the Court at defendant's request on  
26 the basis of the Court's finding that the ends of justice served by taking such action outweigh the  
27 best interest of the public and the defendant in a speedy trial.

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2 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
3 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
4 must commence.

5 IT IS SO STIPULATED.

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7  
8 Dated: November 9, 2020

McGREGOR W. SCOTT  
United States Attorney

9  
10 /s/ KATHERINE E. SCHUH  
KATHERINE E. SCHUH  
Assistant United States Attorney

11  
12 Dated: November 9, 2020

13 /s/ Anthony P. Capozzi  
Anthony P. Capozzi  
Counsel for Defendant  
Pedro Duran

14  
15  
16 **FINDINGS AND ORDER**

17  
18 IT IS SO ORDERED.

19 Dated: **November 10, 2020**

20 /s/ *Sheila H. Oberto*  
UNITED STATES MAGISTRATE JUDGE